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**IN THE
COURT OF APPEALS OF INDIANA**

FRANCISCO J. MARTINEZ, SR.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 02A04-0607-CR-373
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0601-FB-1

January 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Francisco J. Martinez, Sr. (“Martinez”) appeals his convictions of Burglary, a Class B felony,¹ and Resisting Law Enforcement, a Class D felony.² We affirm.

Issue

Martinez raises one issue on appeal: Whether the evidence was sufficient to support his convictions.

Facts and Procedural History

On the afternoon of December 29, 2005, Leslie Franken (“Franken”) left work to retrieve something from his home. Upon arriving, he saw an unfamiliar, cream-colored Cadillac in his driveway. Martinez walked from behind the house, carrying a container of water bottles. Martinez explained that he was there to determine whether a trailer was for sale. Franken indicated that he did not believe Martinez, who then threw the water into the trunk of the Cadillac, backed quickly down the driveway, and drove off. Franken immediately called 911, identifying the car and its license plate.

Officer Liza Thomas (“Officer Thomas”), driving a marked car, heard a dispatch regarding the incident and headed toward Franken’s home. She soon observed the cream-colored Cadillac traveling toward her “at an extremely high rate of speed.” Tr. April trial at 96, 97. Other cars on the road were yielding to the Cadillac, due to its extreme speed. As the Cadillac passed her, Officer Thomas turned on her car’s emergency lights and siren, and

¹ Ind. Code § 35-43-2-1.

pursued the Cadillac. Traveling ninety miles per hour a couple of blocks behind the Cadillac, Officer Thomas was not catching up. Martinez turned into an industrial park, stopped, and exited his vehicle. Officer Thomas apprehended Martinez and placed him in the back of her car. During the April trial, Martinez admitted that he saw Officer Thomas turn on her emergency lights, and acknowledged that he did not stop as quickly as he should have. Further, he admitted that if he could have evaded Officer Thomas, he would have.

Meanwhile, Franken and Officer Smallwood found a large dent in the back door and other evidence of forced entry that had not been there that morning. As the two surveyed the house, Franken noticed that a number of items were missing. Franken and Officer Smallwood then drove to where Martinez had been arrested. Franken identified Martinez as the man who had been at his house, and identified a series of articles in the Cadillac that had been taken from his house, including the water, a flat-screen television, a DVD player, DVDs, a rack of CDs, and a bottle of coins.

The State charged Martinez with Burglary, Resisting Law Enforcement, Receiving Stolen Property, and Operating a Vehicle upon Highway while Driving Privilege, License, or Permit is Suspended or Revoked. The latter two charges, however, were dismissed. During a trial conducted on April 12, 2006 (“April trial”), a jury found Martinez guilty of Resisting Law Enforcement, but was unable to reach a verdict as to Burglary. The trial court sentenced Martinez to three years imprisonment.

On June 6, 2006, Martinez was re-tried for Burglary (“June trial”). Martinez contradicted Franken’s description of the incident, testifying that he was at Franken’s home

² I.C. § 35-44-3-3.

to collect payment for a cocaine transaction. According to Martinez, Franken indicated that he did not have the money. Martinez then took the items from Franken's home as a "penalty" for his not having the money, rather than as payment of the debt. Tr. June trial at 157. A jury found Martinez guilty as charged. The trial court sentenced him to 15 years imprisonment, with the sentences for Burglary and Resisting Law Enforcement to run concurrently. Martinez now appeals.

Discussion and Decision

Our standard of review when considering the sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Robinson v. State, 699 N.E.2d 1146, 1148 (Ind. 1998). Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. Id. We will uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. Id.

I. Burglary

The State was required to prove that Martinez broke and entered Franken's dwelling with the intent to commit a felony inside, namely theft. Ind. Code § 35-43-2-1. Theft occurs when a person knowingly or intentionally exerts unauthorized control over another's property with the intent to deprive that person of any part of its value. I.C. § 35-43-4-2.

On appeal, Martinez argues that "the evidence failed to establish that he either broke or entered into the home of Leslie Franken or did so with the intent to commit theft." Appellant's Br. at 6. Specifically, Martinez asserts that he had Franken's permission to be

inside the house, and that when Franken indicated that he lacked payment for a cocaine transaction, Martinez and Franken placed the items in the Cadillac as penalty for Franken's not having the money. At trial, Franken denied knowing Martinez, denied giving him permission to be in the dwelling, and denied that the items were associated with a drug transaction.

Martinez does not contest being in Franken's dwelling. Further, he acknowledges that the articles found in his car were from Franken's house. His only defense to Burglary is his claim of why he was in the dwelling and why the articles were in his car. The testimony of Franken and Martinez differed in almost every detail. Franken saw Martinez walking from behind Franken's home with water kept inside the back door. When confronted, Martinez took the water and other more valuable items and sped off. Franken and Officer Smallwood found indications of forced entry that had not been there that morning. In evaluating the evidence, the jury clearly chose to believe Franken. We decline to reweigh the evidence or assess the credibility of either person. Considering the evidence that supports the verdict, we conclude there was substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt.

II. Resisting Law Enforcement

The State was required to prove that Martinez knowingly or intentionally used a vehicle to flee "a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop." I.C. § 35-44-3-3.

In testifying at the April trial, Martinez essentially admitted his guilt. He noted that he saw Officer Thomas turn on her emergency lights, and acknowledged that he did not stop as quickly as he should have. Further, he admitted that if he could have evaded Officer Thomas, he would have. Meanwhile, Officer Thomas drove ninety miles per hour in pursuing Martinez, but was failing to catch up with him. The jury found that Martinez had fled law enforcement. Again, we decline to reweigh this evidence.

Conclusion

We conclude that there was sufficient evidence to find that Martinez was guilty of Burglary and Resisting Law Enforcement.

Affirmed.

VAIDIK, J., and BARNES, J., concur.